

**SPOUSES NORBERTO OLIVEROS & ELVIRA OLIVEROS, HEREIN
REPRESENTED BY HER HUSBAND, NORBERTO OLIVEROS &
CABUYAO COMMERCIAL CENTER, INC., PETITIONERS, VS. THE
HONORABLE PRESIDING JUD...**

G.R. NO. 165963. September 03, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for review on Certiorari under Rule 45[1] of the Rules of Court assails: (1) the 23 August 2004 Decision[2] of the Court of Appeals in CA-G.R. SP No. 80525 denying the petition for Certiorari under Rule 65 filed by the petitioners; and (2) the 5 November 2004 Resolution of the same court denying petitioners' Motion for Reconsideration.

Spouses Norberto and Elvira Oliveros; Benito, Florencia, Rene, and Danilo, all surnamed Nevalga; Cresencia N. Faylona and Felina Ong-Iko and Cabuyao Commercial Center, Inc. (hereinafter collectively referred to as the mortgagors) obtained two loans for the construction of the Cabuyao Commercial Complex in the total principal amount of P58,000,000.00 as evidenced by promissory notes[3] from Metropolitan Bank and Trust Company (Metrobank). To secure the loans, spouses Norberto and Elvira Oliveros and Florencia Nevalga executed a Deed of Real Estate Mortgage[4] dated 30 April 1997 in favor of Metrobank over three parcels of land together with all the buildings and improvements existing thereon located at Provincial Road, Bo. Ditas, Sta. Rosa, Laguna, covered by Transfer Certificates of Title (TCTs) No. T-316615, No. T-316620 and No. T-316668, all registered in the name of Elvira B. Nevalga and issued by the Registry of Deeds of Calamba, Laguna (subject properties).

For failure of the mortgagors to pay their loan obligation under the terms and conditions of the promissory notes, Metrobank instituted extrajudicial foreclosure proceedings over their Real Estate Mortgage under Act No. 3135[5] and caused the subject properties to be sold at a public auction held on 14 January 2000 for the sum of P5,500,160.00. Metrobank emerged as the highest bidder at the auction sale. The corresponding Certificate of Sale was issued in favor of Metrobank and registered with the Registry of Deeds of Calamba, Laguna, on 4 February 2000. The mortgagors failed to redeem the subject properties from Metrobank within the one-year period from the date of the registration of the Certificate of Sale; thus Metrobank consolidated its title to the subject properties. TCTs No. T-316615, No. T-316620 and No. T-316668 were cancelled and, in lieu thereof, new titles, TCTs No. T-500473, No. T-500473 and No. T-500475, were issued and registered in the name of Metrobank.

Metrobank demanded[6] that the mortgagors turn over actual possession of the subject properties, but the mortgagors failed and refused to do so. This prompted Metrobank to file on 28 February 2003 an Ex Parte Petition for the issuance of a writ of possession before the Regional Trial Court (RTC) of Biñan, Laguna, Branch 24, docketed as LRC Case No. B-3220.[7]

The spouses Norberto and Elvira Oliveros and Cabuyao Commercial Center, petitioners in this case, filed with the

RTC an Opposition to the Petition for issuance of writ of possession[8] filed by Metrobank. Petitioners claimed that on 19 February 2001, they filed before the RTC of Biñan, Laguna, Branch 24, a complaint against Metrobank for nullification of foreclosure proceedings with damages docketed as Civil Case No. B-5829.

Petitioners prayed that they be given the opportunity to be heard during the entire proceedings on the Ex Parte Petition of Metrobank and that the writ of possession be withheld or denied.

On 19 March 2003, the trial court issued a Notice of Hearing setting the hearing of the Petition on 28 April 2003. Being unavailable on said date, counsel for the petitioners filed a Motion to Cancel hearing and prayed that the same be reset to 26 May 2003.

On 1 April 2003, Metrobank filed its Reply to the Opposition. Petitioners filed a Rejoinder on 9 April 2003 to which, in turn, petitioner filed its Sur-Rejoinder dated 25 April 2003.

During the hearing on 28 April 2003, the trial court allowed Metrobank to present evidence to prove compliance with the jurisdictional requirements of the petition. But for lack of material time, the trial court issued an Order which set the reception of evidence ex parte on 20 June 2003.

The Order of the trial court dated 28 April 2003 reads:

After counsel for the [Metrobank] marked documents to comply with the jurisdictional requirements and after the petition has been read aloud and nobody opposed it except the opposition filed by spouses Norberto Oliveros and Elvira Oliveros already attached on the record, let the presentation of [Metrobank's] evidence be set on June 20, 2003 at 2:00 p.m.[9]

On 17 June 2003, petitioners filed a Manifestation with Ex Parte Motion to Cancel Hearing and stated therein that the trial court should not have allowed Metrobank to present its evidence until the Opposition to the subject petition was resolved. They also prayed that the scheduled presentation of evidence ex parte be cancelled and reset to 18 July 2003 or on such other date convenient to the trial court, considering that the setting of the same was unilaterally made by the trial court without the concurrence of petitioners' counsel.

Notwithstanding the preceding Manifestation, on 20 June 2003, counsel for the petitioners requested Atty. Ildebrando Cornista to appear for and in their behalf.

After hearing the oral arguments of the contending parties, the trial court denied petitioners' Opposition and allowed respondent Metrobank to proceed with its presentation of evidence ex parte.

The hearing for Metrobank's presentation of evidence ex parte was held as scheduled on 20 June 2003. Petitioners again filed a Motion for Reconsideration[10] of the RTC Order dated 28 April 2003 substantially reiterating their Opposition to the issuance of the writ of possession.

On 20 June 2003, the RTC issued another Order in which it held:

It appears from the record that the petition filed by the petitioner for the Issuance of Writ of Possession was filed on February 20, 2003, and this was based on the result of the foreclosure proceeding where the Certificate of Sale was allegedly registered. It is clear in several Decisions of the Supreme Court that Issuance of Writ of Possession is not a judgment on the merits and the Issuance of Writ of Possession in Extra-Judicial Foreclosure is merely a ministerial function. That was decided in the case of AD Corporation versus Court of Appeals Vol. 28, SCRA, page 155. There is also a Decision by the Honorable Supreme Court in the case of Honorable Luis Reyes versus UCPB, 193 SCRA, Series 1956 that being ex parte there is no discretion left to the Court. It is stated in said case that upon filing of said motion and approval of the bond it simply directs the Court to issue the Order of Writ of Possession and no discretion is left to the Court. Any question regarding the validity and formality of the said subsequent resolution of the writ is left to be determined in the subsequent proceeding as

outlined in Section 8 and since the spouses [Norberto and Elvira Oliveros] are just for opposing the Issuance of the Writ of Possession, the opposition is hereby denied since under the rule, the petition is considered as an ex-parte proceeding. Consequently, the Motion for Reconsideration of the Order dated April 28, 2003, filed by said Spouses is likewise denied.[11]

Petitioners then filed a Petition for Certiorari under Rule 65 of the Rules of Court before the Court of Appeals, docketed as CA-G.R. SP No. 80525.

The Court of Appeals rendered a Decision dated 23 August 2004 denying due course to and dismissing petitioners' petition. The Court of Appeals concluded that the grant of the writ of possession is a ministerial function. Considering that Metrobank already acquired titles to the subject properties, its right to possess said properties as an owner became absolute. Until a court of competent jurisdiction annuls the foreclosure sale, petitioners are bereft of any valid title and right to prevent the issuance of a writ of possession.

Petitioners filed a Motion for Reconsideration of the foregoing Decision which the Court of Appeals likewise denied in a Resolution[12] dated 5 November 2004.

Petitioners are now before this Court via a Petition for Review on Certiorari under Rule 45 of the Rules of Court based on the following grounds:

I

THE HONORABLE COURT OF APPEALS HAS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW, PERTINENT PROVISIONS OF THE 1997 RULES OF CIVIL PROCEDURE AND APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT CONSIDERING THAT:

- THE COURT OF APPEALS SERIOUSLY ERRED IN SUSTAINING THE ASSAILED ORDERS BY THE PUBLIC RESPONDENT IN A PETITION FOR CERTIORARI AS HAVING BEEN ISSUED WITHOUT COMMITTING GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION NOTWITHSTANDING THE FACT THAT INCIDENTS WHICH ARE NOT YET FILED WERE ALREADY RESOLVED.

- THE COURT OF APPEALS SERIOUSLY ERRED IN SUSTAINING THE ASSAILED ORDERS ISSUED BY THE PUBLIC RESPONDENT NOTWITHSTANDING THE FACT THAT THE SAME WERE IN PATENT VIOLATION OF THE CONSTITUTIONALLY GUARANTEED RIGHT OF THE PETITIONERS TO DUE PROCESS.[13]

The Petition is without merit.

A writ of possession is an order whereby the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under the following instances: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) pending redemption in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118; and (4) in execution sales under the last paragraph of Section 33, Rule 39 of the Rules of Court.[14]

Section 6 of Act No. 3135, as amended, provides:

Sec. 6. Redemption. — In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at anytime within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred

and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Under the said provision, the mortgagor or his successor-in-interest may redeem the foreclosed property within one year from the registration of the sale with the Register of Deeds.

After the one-year redemption period, the mortgagor loses all interest over the foreclosed property.[15] The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.[16] In such a situation, the bond required under Section 7 of Act No. 3135, as amended, is no longer needed. The possession of land becomes an absolute right of the purchaser as confirmed owner.[17] The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After the consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.[18] As such, the court cannot exercise its discretion.

It bears to stress that after the consolidation of title in the name of the purchaser of the foreclosed property, upon failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to the purchaser is merely a ministerial function, for which the court exercises neither discretion nor judgment.

A clear line demarcates a discretionary act from a ministerial one —

The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[19]

As to the nature of a petition for a writ of possession, it is well to state that the proceeding in a petition for a writ of possession is ex parte and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.[20]

By its very nature, an ex parte petition for issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135 as amended.[21]

It is not strictly speaking a judicial process as contemplated in Article 433 of the Civil Code.[22] It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong." [23]

The law does not require that a petition for a writ of possession may be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court. As long as a verified petition states the facts sufficient to entitle the petitioner to the relief requested, the court shall issue the writ prayed for. The petitioner need not offer any documentary or testimonial evidence for the court to grant the petition.[24]

In the present case, Metrobank purchased the properties at a public auction following the extrajudicial foreclosure of the subject properties. Certificates of sale over the properties were issued in favor of Metrobank and registered with the Registry of Deeds of Calamba, Laguna, on 4 February 2000. Petitioners as mortgagors failed to redeem the properties within the one-year period of redemption from the registration of the Sheriff's Certificate of Sale

thereof with the Registry of Deeds; hence, Metrobank consolidated its ownership over the subject properties.

Metrobank having consolidated its title to the mortgaged properties, is even more entitled now to possession thereof and makes more unmistakable its right to file an ex parte motion for the issuance of a writ of possession. The issuance of the writ of possession becomes a mere ministerial duty on the part of the judge.

Corollary to this, we have extensively ruled in *Mamerto Maniquiz Foundation, Inc. v. Pizarro*,^[25] thus:

It is a settled rule that after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. In the case of *Vaca v. Court of Appeals* (G.R. No. 109672, 14 July 1994, 234 SCRA 146, 148), this Court held:

"x x x The question raised in this case has already been settled in *Vda. de Jacob v. Court of Appeals* [184 SCRA 199], in which it was held that the pendency of a separate civil suit questioning the validity of the mortgage cannot bar the issuance of the writ of possession, because the same is a ministerial act of the trial court after title on the property has been consolidated in the mortgagee. The ruling was reiterated in *Navarra v. Court of Appeals* [204 SCRA 850], in which we held that as a rule any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession."

Indeed, the pendency of an action questioning the validity of a mortgage cannot bar the issuance of the writ of possession after title to the property has been consolidated in the mortgagee. Thus, it follows that at the expiration of the period of redemption, the mortgagee who acquires the property at the foreclosure sale can proceed to have the title consolidated in his name and a writ of possession issued in his favor. More to the point is the case of *Ong v. Court of Appeals* [G.R. No. 121494, 8 June 2000, 333 SCRA 189, 197-198], where this Court held:

In several cases, the Court has ruled that the issuance of a writ of possession is a ministerial function. "The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the order following these express provisions of law cannot be charged with having acted without jurisdiction or with grave abuse of discretion." Therefore, the issuance of the writ of possession being ministerial in character, the implementation of such writ by the sheriff is likewise ministerial.

Regardless of whether or not there is a pending action for nullification of the sale at public auction, or of the foreclosure itself, or even for the nullification of the real estate mortgage, the purchaser at the public auction is entitled to a writ of possession without prejudice to the outcome of the action filed by the petitioners.^[26]

Equally akin is *Samson v. Rivera*,^[27] in which it was ruled that:

Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing for that purpose an ex parte motion under oath, in the corresponding registration or cadastral proceeding in the case of a property with torrens title. Upon the filing of such motion and the approval of the corresponding bond, the court is expressly directed to issue the writ.

This Court has consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, it to be determined in a subsequent proceeding as outlined in Section 8 of Act 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is ex parte. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.

The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. Hence, at any time following the consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser,

he or she is even more entitled to possession of the property. In such a case, the bond required under Section 7 of Act 3135 is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner.

In *Yu v. Philippine Commercial and International Bank*,^[28] this Court underscored that:

[S]ince the one-year period to redeem the foreclosed properties lapsed on October 1, 1999, title to the foreclosed properties had already been consolidated under the name of the respondent. As the owner of the properties, respondent is entitled to its possession as a matter of right. The issuance of a writ of possession over the properties by the trial court is merely a ministerial function. As such, the trial court neither exercises its official discretion nor judgment. Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of the pending suit for annulment of the certificate of sale, respondent is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The assailed Decision of the Court of Appeals dated 23 August 2004 and Resolution dated 5 November 2004 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Public respondent was erroneously impleaded in the present Petition for Review on Certiorari. Rule 45, Section 4 of the Rules of Court provides:

SEC. 4. Contents of petition. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; x x x.

[2] Penned by Justice Jose L. Sabio, Jr. with Associate Justices Perlita J. Tria Tirona and Noel G. Tijam, concurring; rollo, pp. 45-51.

[3] Records, pp. 13-14.

[4] *Id.* at 15.

[5] *Id.* at 162.

[6] *Id.* at 175.

[7] *Id.* at 2.

[8] *Id.* at 28.

[9] *Id.* at 68.

[10] *Id.* at 181.

[11] *Id.* at 195-196.

[12] Rollo, p. 52.

[13]Rollo, p. 17.

[14] Autocorp. Group and Autographics, Inc. v. Court of Appeals, G.R. No. 157553, 8 September 2004, 437 SCRA 678, 689, Philippine National Bank v. Sanao Marketing, Inc., G.R. No. 153951, 29 July 2005, 465 SCRA 287, 301.

[15] Yulienco v. Court of Appeals, 441 Phil. 397, 406 (2002).

[16] Samson v. Rivera, G.R. No. 154355, 20 May 2004, 428 SCRA 759, 771.

[17]Chailease Finance Corporation v. Ma, G.R. No. 151941, 15 August 2003, 409 SCRA 250, 253.

[18]De Vera v. Agloro, G.R. No. 155673, 14 January 2005, 448 SCRA 203, 213-314.

[19]Espiridion v. Court of Appeals, G.R. No. 146933, 8 June 2006, 490 SCRA 273, 277.

[20]Santiago v. Merchants Rural Bank of Talavera, Inc., G.R. No. 147820, 18 March 2005, 453 SCRA 756, 763-764.

[21]Penson v. Maranan, G.R. No. 148630, 20 June 2006, 491 SCRA 396, 407.

[22] Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

[23] De Vera v. Agloro, supra note 18.

[24] Santiago v. Merchants Rural Bank of Talavera, Inc., supra note 20 at 765.

[25] A.M. No. RTJ-03-1750, 14 January 2005, 448 SCRA 140, 151-153.

[26]Alarilla, Sr. v. Ocampo, 463 Phil. 158, 166 (2003)

[27] G.R. No. 154355, 20 May 2004, 428 SCRA 759.

[28]G.R. No. 147902, 17 March 2006, 485 SCRA 56, 72.

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